



## Repeal, Replace, Regret

*A rocky start for GOP health care reform.*

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Trusting the process makes for good life advice and bad legislating. The morning after congressional Republicans released their Obamacare replacement, dubbed the American Health Care Act, conservative talk show host Laura Ingraham complained it lacked the “Trumpism of the health care reform” the president touted on the campaign trail. “[T]he Trumpiest parts of it were transparency in pricing, competition across state lines. . . . Where is that in this plan?” she asked during an appearance on *Fox & Friends*. That program being the eggs and toast of Trump’s TV breakfast, he quickly responded on Twitter. “Don’t worry, getting rid of state lines, which will promote competition, will be in phase 2 & 3 of healthcare rollout,” he wrote, tagging @foxandfriends.

The implication was that right-of-center critics and nervous members of the public should be reassured the AHCA is only phase one. Republicans envisaged replacing Obamacare as a multistep effort from the start, but they said so in Delphic terms. The plan was first to repeal, then “to begin that orderly transition to something better,” Vice President Mike Pence conveyed in January. The transition was ill-defined. According to Pence and House speaker Paul Ryan, it would comprise a mix of legislative and executive actions. There was no talk of a specific three-pronged approach—only a bunch of jargon particular to the Capitol. After all, to a fifth of the country, reconciliation is just the modern word for the sacrament of confession.

To the GOP majority in need of a more political kind of grace, it’s a supplement to the budgeting process that makes it easier to enact some reforms. A distilled explanation: Reconciliation expedites the ability of the legislature to adjust taxes and certain entitlement programs, which operate independently of the annual appropriations process and consume a supersize portion of federal spending. The AHCA uses reconciliation to axe parts of Obamacare, such as the unpopular individual mandate. But instead of doing so by striking the law, it slashes the mandate penalty, a tax, to \$0. The bill also phases out Obamacare’s premium subsidies, swapping them for tax credits, and reworks the statute’s expansion of Medicaid.

But Obamacare is not merely a law of revenues and outlays. By rule, the parts of it that aren’t cannot be altered through reconciliation—thus Republicans’ dubbing the AHCA phase one. Determining those parts is apparently an ongoing task.

Obamacare's regulations to rescue individuals with preexisting conditions are one example. They prohibit insurers from "charging differential premiums based on health status (known as community rating) and require them to offer coverage to all people wishing to purchase it (known as guaranteed issue)," described University of Illinois at Chicago professor Anthony T. LoSasso. Critics have long charged these rules give individuals an incentive to forgo purchasing insurance until they need to use it. In turn, increasing numbers of healthy people exit the market, the premiums of sicker participants rise, and the two forces chase each other down a death spiral. Democrats mitigated the risk by adopting a mandate penalty. But under the AHCA, there isn't one—only a 30-percent surcharge on premiums for coverage purchased outside an open enrollment window.

Under such a scenario, the community rating and guaranteed issue rules need to go, say conservative and libertarian analysts. But the House GOP bill left them alone. Did it have to because of the limits of reconciliation? The Cato Institute's Michael Cannon, a leading critic of both the AHCA and Obamacare, told *The Weekly Standard* he doesn't believe so. "House Republicans still don't understand how harmful Obamacare's preexisting-conditions provisions are. If they did, they would be pulling out all the stops to repeal them," he said, including reconciliation, which should cover regulations that are conditions on spending.

But it's not impossible the House wanted to punt the question altogether, given the Senate rules that permit objections to "extraneous" language in spending legislation of this sort. House Ways and Means chairman Kevin Brady repeatedly referenced the obstacle in explaining why the AHCA skipped several items of interest to the right. "Look, the Senate plays a key role here. Yes, we've been coordinating with them on this, but they may have their own ideas. Or because these are Senate rules we're trying to comply with, they may be able to find a way to do things that the House cannot," he told Hugh Hewitt.

A Senate aide with knowledge of the process left open such a possibility. "Leader [Mitch] McConnell will decide the best way to bring the bill to the Senate floor. Senators have been and are continuing to be consulted on the content of the legislation, and will have the opportunity to provide amendments and input during the 'vote-a-rama,' " the aide told *TWS*, using the slang for the marathon amendment proceedings to come.

What the Senate can't achieve through reconciliation will fall to another legislative phase: a more conventional component in which the upper chamber's activity is subject to a 60-vote threshold. To get interstate insurance competition and changes to prescription drug prices, President Trump needs support from Democrats. Conservatives who want action on the preexisting conditions issue would need it, too, but they may not get it short of a crisis. Eighty-seven percent of respondents in a recent CNN poll favored maintaining those regulations. There's a reason the president and the GOP have insisted they'll keep them, at least in some fashion.

The remaining phase belongs to Health and Human Services Secretary Tom Price, who has substantial regulatory authority based on the power Obamacare granted to his department. Price can decentralize the "essential health benefits" the federal government says insurers must offer in their coverage, for example, transferring that oversight to the states. He can also undo the law's contraceptive mandate. He was outspoken about both matters during his time as a House member.

Two days after Trump provided only the most cursory hint about all this, Speaker Ryan rolled up his sleeves, rolled out a PowerPoint, and, as a CNN chyron taunted, "attempt[ed] to explain" the details of what the president had in mind. "There's a lot of stuff we would *loooooove* to put in the bill," Ryan said, "but unfortunately, the Senate rules don't allow us to do that." The limitations of reconciliation are the GOP leadership's scapegoat for now, both for legitimate reasons and a few big ones that right-wing skeptics doubt. The process could end up converting them down the road. For now, it's only fazed them.